IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16010 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BOB HOUSING FINANCE LTD. - Petitioner(s)
Versus
H.B. BUILDERS PVT. LTD. & 7 - Respondent(s)

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Appearance :
MR MANOJ N POPAT for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1,6 - 7.
MR DABHI, AGP for Respondent(s) : 2 - 5, 8,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/04/2007

ORAL JUDGMENT

1. In this petition, the petitioner has challenged the order dated 28th June, 2005 passed by the City

Civil Court, Ahmedabad below Exhibit 50 in Summary Suit No. 3432 of 2003.

2. Shortly stated facts leading to the present petition are as follows:

2.1 The petitioner was the original plaintiff in the above mentioned Summary Suit No. 3432 of 2003 filed against the opponents no. 1 to 7 herein.

2.2 During the pendency of the said Summary Suit and before the stage of recording evidence arrived, there was a settlement between the parties. The petitioner, therefore, filed pursis Exhibit 49 before the City Civil Court and declared that there has been a settlement between the plaintiff and the defendants and therefore the plaintiff does not desire to proceed further with the suit and seeks permission to withdraw the same. This pursis was filed on 20th June 2005.

2.3 On the same day i.e. 20th June 2005, the plaintiff i.e. the petitioner herein filed a

pursis/application Exhibit 50 and prayed before the learned Judge that since there has been a settlement between the parties in the said suit, the plaintiff be refunded the court fees as per rules.

2.4 It is below this application Exhibit 50 that the learned Judge passed his impugned order on 28th June 2005.

3. By the impugned order the learned Judge was pleased to reject the request of the petitioner for refund of the court fees as per rules. For doing so, the learned Judge observed that there should be some evidence brought before the court regarding the particular settlement entered into between the parties and that unless the parties produce such evidence, the plaintiff is not entitled to refund of the court fees. It was also stated by the learned Judge that as per the provisions contained in Section 43 of the Gujarat Court Fees Act, 2004 refund of court fees has been prohibited wherein the amount of court fees paid does not exceed Rs. 100/- or wherein the claim for repayment is made within one year from the date on which the suit, appeal or cross objection

was settled by the agreement.

4. Appearing for the petitioner, learned advocate Mr. Manoj Popat submitted that the trial court gravely erred in rejecting the application of the petitioner for refund of the court fees as may be permissible under the rules. He submitted that the reasons stated by the learned Judge are not germane to the issues arising. Placing reliance on the provisions contained in Section 43 of the Gujarat Court Fees Act, the learned advocate submitted that the provisions contained in sub-section (1) of section 43 of the said Act are sufficiently clear, permitting no ambiguity and the plaintiff was entitled to receive half the amount of court fees paid when the suit was sought to be withdrawn upon settlement before recording of evidence.

5. Reliance was placed on the decision of the learned Single Judge of this court in the case of Jayantilal Jagjivandas v. Ratilal Somnath and Others reported in 8 GLR 676 wherein the learned Judge held that requirements of section 43 of the Bombay Court Fees Act, 1959(which contained provisions pari materia to section 43 of Gujarat Court Fees Act,

2004) is satisfied if the suit is settled by agreement of parties before the evidence is recorded and that there is nothing in that section to require that the settlement of the suit should be before the findings of the preliminary issues in addition to being before the evidence is recorded.

6. Learned AGP, Shri Dabhi appeared for respondent no.8 and made his submissions before the Court.

7. Since the dispute arising in this petition is solely between the petitioner and respondent no.8, I have proceeded further with the hearing of the petition even in absence of respondents no. 1, 6 and 7 who are only formal parties.

8. Having heard learned advocates appearing for the parties I find that the learned Judge materially erred in rejecting the request of the petitioner for refund of the court fees as per rules.

9. It is not in dispute that the settlement pursis was filed before the trial court before recording of evidence. Sub-section (1) of Section 43 of the Gujarat Court Fees Act, 2004 reads as follows:

> **“43. Repayment of fee in certain circumstances :-**
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> (1) When any suit in a Court is settled by agreement of parties before any evidence is recorded, or any appeal or cross objection is settled by agreement of parties before it is called on for effective hearing by the Court, half the amount of the fee paid by the plaintiff, appellant, or respondent on the plaint, appeal or cross objection, as the case may be, shall be repaid to him by the Court.
>
> **PROVIDED** that no such fee shall be repaid if the amount of fee paid does not exceed one hundred rupees or the claim for repayment is not made within one year from the date on which the suit, appeal or cross objection was settled by agreement.”

10. The provisions contained in sub section (1) of Section 43 of the Gujarat Court Fees Act are sufficiently clear. The sub section provides for refund of half court fees paid by the plaintiff in case the suit is settled by agreement between the parties before any evidence is recorded. There are only two exceptions provided in the proviso attached to the said sub section. The exceptions are that such refund shall not be made if the amount of fee paid is less than Rs. 100/- or the claim for repayment is not made within one year from the date on which the suit, appeal or cross objection was

settled by agreement.

11. In the present case, the settlement pursis was filed at Exhibit 49 on 20th June 2005. On the very same day application Exhibit 50 seeking refund of court fees as per rules was filed. There is no question of such an application being beyond the period of limitation prescribed under the proviso to sub section (1) of Section 43 of the Gujarat Court Fees Act. The insistence on the part of the learned Judge to have the original settlement between the parties on record before the court fees can be paid is not supported by the provision of sub section (1) of section 43 of the Gujarat Court Fees Act.

12. As noted, the learned Single Judge of this Court in the case of Jayantilal Jagjivandas v. Somnath (Supra) held that court fee can be repaid as provided in section 43 of the Bombay Court Fee Act when the settlement has taken place before recording of evidence even if it happened after the court decided preliminary issues. In the present case even the preliminary issues were not raised or decided by the learned Judge.

13. Under the circumstances, I find that the court materially erred in rejecting the application Exhibit 50 filed by the petitioner. The petitioner is thus held entitled to receive part of the court fees paid as per section 43 of the Gujarat Court Fees Act 2004. Same shall be accordingly refunded within a period of eight weeks from the date of receipt of the copy of this order. The impugned order dated 28.06.2005 passed by the City Civil Court, Ahmedabad below Exhibit 50 in Summary Suit No. 3432 of 2003 is therefore quashed. Rule is made absolute. No order as to costs.

(AKIL KURESHI, J.)

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